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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ENKELEJDA OQUENDO, :
:
Plaintiffs, :
:
-against- :
:
4 COWBOYS CORPORATION (d/b/a HOLY :
GUACAMOLE), AND DOE OWNERS 1 :
THROUGH 4, :
:
Defendants. :
----- x

MEMORANDUM & ORDER

19-cv-1901 (ENV) (JO)

VITALIANO, D.J.

Plaintiff Enkelejda Oquendo brought this action against 4 Cowboys Corporation (d/b/a Holy Guacamole) and Doe Owners 1 through 4, alleging violations of the Fair Labor Standards Act of 1938 (“FLSA”), 29 U.S.C. §§ 201 *et seq.*; 42 U.S.C. § 1981; New York Labor Law (“NYLL”), §§ 650 *et seq.*; and the New York City Human Rights Law (“NYCHRL”), N.Y.C. Admin. Code §§ 8-101 *et seq.* *See generally* Dkt. 1 (“Compl.”). Specifically, plaintiff alleges defendants failed to pay her minimum wage and overtime wages, forced her to share tips with management, failed to provide her with legally-mandated wage notices and wage statements, and discriminated against her based on her race, national origin, and sex. *Id.* On September 19, 2019, the parties filed a joint motion for settlement approval. Dkt. 22. During a telephone conference on September 20, 2019, Magistrate Judge James Orenstein explained he could not, at that time, approve the settlement in its then current form. *See* Dkt. 23.

On October 4, 2019, plaintiff filed a supplemental motion for settlement approval, Dkt. 24, and defendants filed a fully executed settlement agreement on October 21, 2019. Dkt. 26. That same day, Judge Orenstein issued a Report and Recommendation (“R&R”), *sua sponte*, finding the settlement fair and reasonable, pursuant to *Cheeks v. Freeport Pancake House, Inc.*,

796 F.3d 199 (2d Cir. 2015), and recommending that the Court approve the settlement. For the reasons set forth below, the R&R is adopted as the opinion of the Court.

Discussion

In reviewing a report and recommendation of a magistrate judge, a district court “may accept, reject, or modify, in whole or in part, the [magistrate judge’s] findings or recommendations.” 28 U.S.C. § 636(b)(1). Where no timely objection to the report and recommendation has been made, the “district court need only satisfy itself that there is no clear error on the face of the record” to accept a magistrate judge’s report and recommendation, and “may adopt those portions of the [r]eport . . . which are not facially erroneous.” *Price v. City of New York*, 797 F. Supp. 2d 219, 223 (E.D.N.Y. 2011) (citations and internal quotation marks omitted). Here, having been provided notice of the time to object, the parties have not filed any objections to the R&R, and the time to do so has passed.

In its review of the record, the Court looks to “the totality of circumstances, including but not limited to the following factors: (1) the plaintiff’s range of possible recovery; (2) the extent to which ‘the settlement will enable the parties to avoid anticipated burdens and expenses in establishing their respective claims and defenses’; (3) the seriousness of the litigation risks faced by the parties; (4) whether ‘the settlement agreement is the product of arm’s-length bargaining between experienced counsel’; and (5) the possibility of fraud or collusion.” *Wolinsky v. Scholastic Inc.*, 900 F. Supp. 2d 332, 335 (S.D.N.Y. 2012) (quoting *Medley v. Am. Cancer Soc.*, No. 10-Cv-3214 (BSJ), 2010 WL 3000028, at *1 (S.D.N.Y. July 23, 2010)). Applying these factors upon review, the Court finds the R&R to be correct and free from error. Accordingly, the Court adopts the R&R, in its entirety, and finds the settlement fair and reasonable.

Conclusion

For the reasons set forth above, the R&R, issued by Judge Orenstein, is adopted, and the

settlement agreement jointly proposed by the parties, Dkt. 26, is approved. The parties are directed to file an executed stipulation of dismissal.

So Ordered.

Dated: Brooklyn, New York
November 22, 2019

s/ Eric N. Vitaliano

ERIC N. VITALIANO
United States District Judge